

# Staking a Mining Claim on Federal Lands



**U.S. Department of the Interior**  
Bureau of Land Management



*U.S. Department of the Interior. As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interests of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.*

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The Federal Land Policy and Management Act of 1976 launched a new era for public land management in America's Third Century. The Act provides that the public lands remain under the stewardship of the Federal Government, unless disposal is in the national interest, and that their resources be managed under a multiple-use concept that will best meet present and future needs of the American people. This information booklet concerns a facet of one of these multiple uses: Mining.

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## **What is a Mining Claim?**

The words "claim" and "mining claim" have a definite meaning when used in connection with the mining laws. These words refer to a particular piece of land, valuable for specific mineral deposits, to which an individual has asserted a right of possession for the purpose of developing and extracting a discovered mineral deposit. This right is granted the claimant if he meets the requirements of the Mining Law of 1872, as amended, which applies to all locatable minerals. The mining law guarantees the claimant protection for all lawful uses of his claim for mining purposes, and sets the limits of his rights. If the requirements of the mining law are not met, no rights against the Federal Government exist.

## **Which Federal Lands Are Open to Mining?**

There are many areas where you may locate a mining claim. These areas are in Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Such areas are mostly Federal public lands administered by the Bureau of Land Management (BLM) of the U.S. Department of the Interior and in national forest system lands administered by the Forest Service of the U.S. Department of Agriculture.

Public land records in the proper BLM State Office show which lands are open to mineral entry under the mining laws. These offices keep land status plats that are available to the public for inspection.

BLM publishes a series of surface and mineral ownership maps that depict the ownership pattern of public lands. These maps may be purchased at most BLM offices. For a specific tract of land, it is advisable to check the official land records at the proper BLM State or District Office.

## **Which Federal Lands Are Closed to Mining?**

National parks and national monuments are closed to mining as are Indian reservations, most reclamation projects, military reservations, scientific testing areas, some wildlife protection areas such as Federal wildlife refuges, and lands withdrawn from mineral entry for other reasons. Lands withdrawn for power development are subject to mining location and entry under certain conditions.

Certain lands under the jurisdiction of the Forest Service and the Bureau of Land Management are also off limits to mineral exploration and development under the mining laws by Act of Congress, or by public land orders. No mining claims can be located on these lands as long as such a directive is in effect.

The closed areas are said to be “withdrawn” from mineral entry and location. The public land records in the proper BLM office will show which public lands are withdrawn. It is important that you do not attempt to locate and remove minerals from these withdrawn lands. Not only would your work be wasted, but such activities would be an unauthorized use against the Federal Government and subject to penalties.

## **What Do I Do if the Surface or Minerals Are Privately Owned?**

If the mineral estate on which you wish to prospect is privately owned, the mineral rights must be obtained from the owner through purchase or lease.

The surface estate on some lands (e.g., those that were available under the Stockraising Homestead Act) have been patented to private individuals or agencies with a reservation of some or all of the mineral rights to the Federal Government. Unless these lands are withdrawn, they are open to mineral entry and location, subject to certain restrictions or requirements.

## What Types of Minerals May Be Claimed?

For purposes of the mining laws, minerals are classified as *locatable*, *leasable* or *salable*. Only locatable mineral deposits may be staked and claimed under the Mining Law of 1872, as amended. Locatable minerals include both metallic (gold, silver, lead, etc.) and nonmetallic (fluorspar, asbestos, mica, etc.) minerals.

Salable mineral materials may not be located under the mining laws but may be purchased under the Materials Act of 1947, as amended. These include the common varieties of sand, gravel, stone, pumice, pumicite, cinders and clay. These materials may be purchased at fair market value, either at competitive or negotiated sales. A free-use permit may be issued to any Federal or State agency, unit or subdivision, without limitation as to the number of permits or as to the value of the materials to be extracted, provided the applicant makes a satisfactory showing to the authorized officer that such materials will be used for public purposes. A free-use permit also may be issued to a nonprofit organization.

Petrified wood is not subject to location under the mining laws. Small amounts may be removed free of charge by hobbyists for non-commercial use. Larger amounts may be purchased.

There are other minerals and fuels that may be leased from the Federal Government and may not be claimed under the mining laws. These leasable minerals are oil and gas, oil shale, geothermal resources, potash, sodium, native asphalt, solid and semi-solid bitumen, bituminous rock, phosphate, coal, and in Louisiana and New Mexico, sulphur. All minerals on certain lands, such as acquired lands and areas offshore, are subject to special leasing laws and regulations, including those minerals that would be locatable if found on public domain lands.

## **When May I Locate a Mining Claim?**

Anyone who is a United States citizen or has declared an intention to become a citizen and any corporation organized under State law may locate a mining claim. A mining claim is valid against the United States only after a valuable mineral deposit has been discovered. The courts have established and the Federal Government follows the *prudent man and marketability test* to determine what is a discovery of a valuable mineral deposit. Requirements of the test have been met where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, and the minerals can be extracted, removed and marketed at a profit.

Although there is no limit to the number of claims you may hold, there must be an actual physical discovery of a valuable mineral deposit on each and every mining claim. Traces, minor indications, geological inference, or hope of a future discovery are not sufficient to satisfy the *prudent man and marketability* rule. Making mining improvements, posting a notice or performing annual assessment work will not create or perpetuate a “right” or interest in the land against the Government if there are no valuable mineral deposits within the claim.

## **What Types of Mining Claims Are There?**

There are four types of mining entries:

1. *Lode Claims*. Deposits subject to lode claims include classic veins or lodes having well-defined boundaries. They also include other rock in-place bearing valuable minerals and may be broad zones of mineralized rock. Examples include quartz or other veins bearing gold or other metallic minerals and low grade disseminated copper deposits.



2. *Placer Claims.* Deposits subject to placer claims are all those not subject to lode claims. These include the “true” placer deposits of sand and gravel containing free gold or other mineral (such as has accumulated in the unconsolidated material of a stream bed) and also include many non-metallic bedded deposits.

3. *Mill Sites.* A mill site is a plot of unappropriated public domain land of a nonmineral character, used for the erection of a mill, or reduction works. Mill sites may be located under either of the following circumstances:

a. when used distinctly and explicitly for mining and milling purposes in connection with the lode or placer claim with which it is associated.

b. for a custom mill not associated with a mining claim.

4. *Tunnel Sites.* A tunnel site is located on a plot of land where a tunnel is run to develop a vein or lode, or to discover a vein or lode. Tunnel sites cannot be patented.

Additional information on types of mining claims may be obtained by consulting the regulations in the *Code of Federal Regulations*, Title 43, Part 3800 (43 CFR 3800).

### **What is the Shape and Size of Each Type of Mining Claim?**

1. Lode claims are usually parallelograms with the longer side lines parallel to the vein or lode. They are located by metes and bounds (giving length and direction of each boundary line). They are limited by statute to a maximum of 1,500 feet in length along the vein or lode and 300 feet on either side of the vein or lode.

2. Placer claims, where practicable, are located by legal subdivision (a legal subdivision is a part of a section, for example the S $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 10, Township 10 South, Range 20 East, Willamette Meridian). They are limited to 20 acres per claim per locator. However, an association of two locators may locate 40 acres, and three may locate 60 acres, etc. The maximum area is 160 acres for eight or more persons.



Each locator should have a bona fide interest in the claim; otherwise he might be considered a “dummy” locator and lose his rights. Corporations are limited to 20-acre claims. On unsurveyed land and in certain other instances, placer claims may be located by metes and bounds.

3. Mill sites are located by metes and bounds or by legal subdivision, and are limited in size to 5 acres per claim.

4. Tunnel sites are located by placing two stakes 3,000 feet apart on the line of the proposed tunnel. The miner may locate lode claims to cover any or all blind veins or lodes, which were not known to exist previously and are intersected by the tunnel, to a distance of 1,500 feet on either side of the center line of the tunnel. This in essence gives the miner the right to prospect in an area 3,000 feet by 3,000 feet.

### **Should I Take any Precautions in Locating a Mining Claim?**

It is essential that you use caution when examining potential mining claim sites and when entering old abandoned tunnels and shafts. Many of the public lands contain old mine workings that can be hazardous. BLM personnel are making an effort to identify and eliminate these hazards but the task is an immense one and far from being completed. Therefore, it is important that prospectors be aware of these potential dangers and exercise care in their activities.

In addition, when locating your claim, disturb only so much of the surface as is necessary to establish your claim on the ground.

### **How Do I Stake a Mining Claim?**

Federal law specifies that claim boundaries be distinctly and clearly marked so as to be readily identifiable. Each State, though, has statutes and regulations supplementing the Mining Law of 1872 and detailing requirements for staking and recording mining claims. It is advisable that

you check with appropriate State agencies (i.e., State geologists or mineral resource departments) before attempting to locate your claim. Failure to comply with Federal and/or State regulations may invalidate your claim and subject you to civil or criminal penalties.

As a general rule, staking a mining claim includes erecting corner posts or monuments, plus posting notice of location on a post or monument in a conspicuous place—usually the point of discovery.

### **How Do I Record a Mining Claim?**

Recordation of mining claims usually involves filing a copy of the location notice in the County Recorder's office in the county in which the claim is located. Location notices generally contain the following information: date, name of locator(s), name of claim(s) whether the mining claim is a lode, placer or mill site, the acreage claimed, and either the legal descriptions by parts of the section, township and range or a connection by distance and direction as accurately as practicable from the discovery point to some well-known, permanent natural object such as an established survey monument, a hill, bridge, fork of a stream or road intersection.

Some States require recordation of a "certificate" of location instead of a "notice" of location. These location "notice" and "certificate" forms may generally be purchased at a local printing company.

All owners of unpatented mining claims or sites on Federal lands, including lands where the U.S. Government owns only the minerals, must also record their holdings with the Federal Government.

Claims and sites on all public lands must be recorded with the BLM State Office having jurisdiction over the area in which the claim is located. New claims or sites must be recorded within 90 days after location.

To properly record a claim or site with BLM, an owner must file a copy of the official record of the notice or certificate of location filed under

State law, including any amendments which alter the description of the claim or site. Maps and other documents filed under State law must accompany the copy of the official record. If State law does not require recordation, the owner must file with BLM a certificate of location and other documents and information specified in the Federal regulations, 43 CFR 3833. There is a \$5 service charge for each claim or site.

Failure to record a claim or site with BLM within the prescribed time periods constitutes abandonment and voids the claim or site.

### **How Do I Maintain a Mining Claim?**

Once a mining claim is established, an owner must perform labor or make improvements worth \$100 each year to verify active interest in the claim. The assessment year commences at 12 Noon on the 1st of September and ends at 12 Noon on the 1st of September of the following year. Under the Federal Land Policy and Management Act of 1976, an affidavit that the assessment work has been done must be filed with both the local county office where such records are kept and with the proper BLM State Office.

Certain types of surveys qualify as assessment work. If these are used as evidence, a detailed report, including basic findings, must be filed with the county and BLM State Offices. Under some circumstances that prevent labor or improvements, the owner can file for a two-year deferment of assessment work with BLM, or file a notice that he intends to hold the claim.

Owners of mill or tunnel sites are not required to file evidence of assessment work; however, they must file a notice of intention to hold the site.

Once a claim or site is recorded with BLM, an affidavit of assessment work, or notice of intent to hold the claim or site, must be filed on or before December 30 of each subsequent year.

As with the failure to record a mining claim or site, failure to file evidence of assessment work or a notice of intent constitutes abandonment.

When a final certificate has been issued in connection with an application for a mineral patent, the owner need no longer file evidence of assessment work or a notice of intent to hold a claim or site.

### **Are There Other Special Regulations Pertaining to Mining?**

Mining on national forest system land is subject to the provisions of the law and regulations of the Secretary of Agriculture as set forth in the *Code of Federal Regulations*, Title 36, Part 228 (36 CFR 228). These regulations require that anyone whose proposed operation could cause "significant disturbance of surface resources" must submit an operating plan. The operating plan should describe the nature of the proposed disturbance and the steps that will be taken to protect surface resources. Miners wishing to prospect or locate claims in national forests are encouraged to contact the local district ranger concerning any questions about operating plans.

Mining on BLM-administered land is subject to the regulations found in 43 CFR 3809, which require an operator to prevent unnecessary and undue degradation, and in certain situations require the operator to prepare a plan of operation.

Mining claims may not be located on Forest Service or BLM-administered land which has been designated by Congress as part of the National Wilderness Preservation System. Future additions to the National Wilderness Preservation System will be closed to mining claim location at the time of designation by Congress. Mining and related activities are permitted only on those valid mining claims which were valid on or before December 31, 1983, or the date of designation as wilderness by Congress, whichever comes later.

Mining activities are subject to the 43 CFR 3809 regulations on land administered by the BLM and to the 36 CFR 228 regulations on FS-administered land.

### **What Rights Do I Obtain From My Mining Claim?**

If you perform and record the annual assessment work and meet all other requirements of Federal and State mining laws, you establish a possessory right to the mining claim for purposes of developing and extracting minerals, but for no other purpose.

### **Are There Any Restrictions on Mining Activity Once a Claim Has Been Located?**

On unpatented mining claims, a mining claimant may use only as much of the surface and surface resources as are reasonably necessary to carry out mining operations and may not build any structures unless they are essential to mining activities. Intermittent or casual mineral development is not sufficient to warrant placing a dwelling on an unpatented mining claim. The Federal Government maintains the right to manage the surface and surface resources, including use of the area for public recreational purposes that do not interfere with mining activity.

The mining laws give locators and owners of mining claims the right of entry and exit across public lands as a necessary incident to their mining activity for purposes of removing minerals and maintaining their claims. This privilege does not mean that the miner has a right to cause unnecessary or undue degradation to public lands under the guise of gaining access to his claim. The miner would be liable in damages if he unnecessarily caused loss or injury to United States' property. For these reasons, vehicles used for mining purposes are not permitted in areas that are temporarily or permanently closed, without an approved plan under 43 CFR 3809. Off-road vehicles in areas designated as restricted must conform to all terms and conditions of restrictions limiting the number and type of vehicles and times of use.

Designations of restricted and closed areas are made by the authorized officer, identified by public notice in newspapers, and posted in the proper BLM office.

### **May Trespass Notices Be Issued for Violations of the Mining Law, as Amended?**

Yes, there are several situations in which trespass may occur. These include:

- *Occupancy trespass.* The sites of unpatented mining claims cannot be used for a home-site, place of business, or for other purposes not reasonably related to mining or milling activities.

- *Mineral material trespass.* Mining claims cannot be located for mineral materials such as common varieties of sand, gravel, building stone, nor for leasable minerals, such as coal. Any removal of these types of mineral material without a permit may constitute a trespass.

- *Withdrawn land trespass.* Mining claims located on lands subsequent to a mineral entry withdrawal are null and void. Any mineral extraction from these lands may constitute a trespass. Mining claims cannot be located on lands that for any reason have been withdrawn from mineral entry.

### **May I Buy a Mining Claim?**

A mining claim may be bought or sold, willed or inherited. However, if a mining claim is invalid (i.e., no discovery has been made, using the *prudent man test*) or is otherwise defective, the claim is not made valid or valuable by being transferred

A great deal of unwise speculation has resulted from activities of unethical or misinformed "promoters" who, for a fee, purport to stake mining claims and do annual assessment work for others. Most of these claims are located in areas of rapid expansion and changing land values. More often than not, these claims have absolutely no value for minerals and are invalid. These promoters are not a part of the mining industry and should not be confused with the legitimate miners or prospectors who



are diligently prospecting for minerals and who may occasionally wish to sell a valid claim to others for development.

### **To Patent or Not To Patent?**

A patented mining claim is one for which the Federal Government has given a deed or passed its title to the claimant. A valid unpatented mining claim is one for which the claimant has obtained the right to extract and remove minerals from the land due to the discovery of a valuable mineral deposit under the mining laws, but to which the claimant has not acquired full title.

It is not necessary to have a patent to mine and remove minerals from a valid mining claim, but a patent will give you exclusive title to the locatable minerals and, in most cases, to use of the surface and all other resources. Since the claimant does not hold full title to an unpatented mining claim, the Government may, at any time, question or challenge its validity. If the claim is invalid, it will be cancelled and the claimant will forfeit all rights to the claim.

As with any mining claim, patenting requires a discovery of a valuable mineral deposit such as satisfies the *prudent man test*. In addition, the applicant needs to have the claim surveyed by a mineral surveyor selected from a roster maintained by BLM, post and publish a notice of intention to apply for a patent for a 60-day period, and pay a non-refundable \$25 filing fee. Evidence of a right of possession to the claim and the basis of the right to patent, including discovery of a valuable mineral deposit and proof that not less than \$500 "worth of development work has been made on, or for the benefit of," each claim, will also need to be shown. Finally, if all these requirements have been satisfied, the applicant must also pay a purchase price of \$5 per acre for lode claims and \$2.50 per acre for placer claims, and he will receive full title to the land and its minerals.

Requirements for patenting a mining claim are outlined and explained in regulations available from BLM.



## **Where Can I Get More Information?**

The Bureau of Land Management, Department of the Interior, has the primary responsibility for administering the laws and regulations regarding the disposal of minerals from all Federal lands. Statutory authority is derived from the Mining Law of 1872, which together with the regulations and court decisions that have interpreted it, are called the Mining Law. The regulations are available from the Bureau of Land Management (Title 43, Code of Federal Regulations, Section 3800). The Law itself (Title 30, United States Code, Sections 21-54) may be examined in most Bureau of Land Management State Offices or in your public library. For information concerning regulations and location of public lands open to mining in specific areas, we suggest you contact the proper Bureau of Land Management State Office. BLM State Offices and their areas of jurisdiction are listed at the end of this booklet. For information regarding national forest system lands, you should contact the appropriate Forest Service regional office. These are also listed at the end of this booklet.

The Interior Department's U.S. Geological Survey publishes many topographic and geologic maps and reports. The central source of information about these maps and related materials is the National Cartographic Information Center, U.S. Geological Survey, National Center, Reston, Virginia 22092. For areas east of the Mississippi River, maps may be purchased from the Branch of Distribution, U.S. Geological Survey, 1200 South Eads Street, Arlington, Virginia 22202, and for areas west of the Mississippi River, from the Branch of Distribution, U.S. Geological Survey, Federal Center, Denver, Colorado 80225.

A layman's introduction to methods of assaying precious metal ores, concentrates, and bullion is given in a report published by the Interior Department's Bureau of Mines. The report describes analytical services provided by some

Federal agencies, discusses analytical techniques applicable to the precious metals, and carries a listing of commercial assay laboratories. A single free copy of the Bureau of Mines Information Circular 8714r, "Assaying Ores, Concentrates, and Bullion," can be obtained from the Branch of Publications Distribution, Bureau of Mines, 4800 Forbes Ave., Pittsburgh, Pennsylvania 15213. Requests should specify both the title and number of the report.

Information concerning State mining laws and regulations which supplement the Mining Law of 1872 plus information concerning the geology of specific areas in a State, can be obtained from State geologists or mineral resource departments.

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STATE OFFICES**

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(907) 271-5555

**ARIZONA:**

Bureau of Land Management  
3707 North 7th Street  
Phoenix, AZ 85014  
(602) 241-5504

**CALIFORNIA:**

Bureau of Land Management  
Federal Building  
2800 Cottage Way  
Sacramento, CA 95825  
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Denver, CO 80205  
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Bureau of Land Management  
350 South Pickett Street  
Alexandria, VA 22304  
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Bureau of Land Management  
324 S. State Street  
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**NORTHERN REGION**

USDA, Forest Service  
Federal Building  
P.O. Box 7669  
Missoula, MT 59807

**ROCKY MOUNTAIN REGION**

USDA, Forest Service  
11177 W 8th Avenue  
P.O. Box 25127  
Lakewood, CO 80225

**SOUTHWESTERN REGION**

USDA, Forest Service  
Federal Building  
517 Gold Avenue, SW  
Albuquerque, NM 87102

**INTERMOUNTAIN REGION**

USDA, Forest Service  
Federal Building  
324 25th Street  
Ogden, UT 84401

**PACIFIC SOUTHWEST REGION**

USDA, Forest Service  
630 Sansome Street  
San Francisco, CA 94111

**PACIFIC NORTHWEST REGION**

USDA, Forest Service  
319 SW Pine Street  
P.O. Box 3623  
Portland, OR 97208

**SOUTHERN REGION**

USDA, Forest Service  
1720 Peachtree Road, NW  
Atlanta, GA 30367

**EASTERN REGION**

USDA, Forest Service  
633 W Wisconsin Avenue  
Milwaukee, WI 53201

**ALASKA REGION**

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